UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, Plaintiff, | ) | |
| Vs. | ) | CASE NO. 3:14 CR 55 |
| JAMES LEDONNE Defendant. | ) | |

**DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION IN RESPONSE**

Comes now Defendant, James LeDonne, by counsel, Visvaldis P. Kupsis, and in support of above named Motion, states as follows:

ARGUMENT

Courts may order a defendant detained pretrial consistent with the Due Process Clause of the Fifth Amendment as long as the detention is not "punishment of the detainee." *Bell v. Wolfish, 441 U.S. 520, 535, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979);* see also United *States v. Salerno, 481 U. S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987).* Absent an expressed intention to punish, whether detention constitutes impermissible punishment or permissible regulation turns on whether the government has a nonpunitive reason for detention and whether detention 'appears excessive in relation to' the nonpunitive purpose." *United States v. Millan, 4 F.3d 1038, 1043 (2d Cir. 1993)* (quoting *Wolfish, 441 U.S. at 538, 99 S. Ct. 1861*). Pretrial detention to prevent flight from the jurisdiction is an important, nonpunitive, regulatory purpose. *Salerno, 481 U.S. at 749, 107 S. Ct. 2095*; *Millan, 4 F3d at 1043*; *United States v. Gonzales Claudio, 806 F.2d 334, 338 (2d Cir. 1986).* But "excessively prolonged" detention may become so unreasonable in relation to the regulatory goals of detention that it violates due process. *Salerno, 481 U. S. At 747 & n. 4, 107 S. Ct. 2095: United States v. Hare, 873 F2d 796, 800-01 (5th Cir. 1989).*

James LeDonne has been detained since May, 2014. During that time, the Government has presented witnesses who have testified to Defendant's character as being dishonest. The Government has also put on some evidence alluding to the fact that the Defendant has prior contact with the State of Florida. The Government also contends that based on the criminal penalties faced by the Defendant and the Defendant's age that he is a flight risk. The Government has also indicated that the Defendant has had access to cash based on payments made by Defendant's former business partner to Defendant's former wife. In its Order of May 1, 2015, the court found that much of the Government's evidence of flight was overstated. DE152

The Government also has indicated that present defense counsel has indicated that the first fourteen counts contained in Defendant's indictment are "relatively simplistic". Defense counsel would agree that the basis of the Government's contentions is not complicated, but would indicate that the defense related to said counts is not quite so simplistic. In order for Defendant to present a defense he must present documentation to support an argument that he was engaged in legitimate business practice and that he had no intent to deceive the alleged victims when they placed orders with his company. As a result, Mr. LeDonne's defense is based not only on the claims of the sixty-five alleged victims, but also in how he dealt with other purchasers during the relevant periods of time, which encompasses six (6) years and several companies.

Defendant's counsel began to review documentation in this case related to eighty-one bankers boxes of material that is stored at the FBI office. This is not the entirety of the paper discovery which is stored at the office, but is a portion of the 80,000 pages of documents previously referenced by the Defendant in prior motions. Counsel spent eight hours at the FBI office and managed to get through almost two boxes of materials. In addition to this, counsel has been advised that he will require a storage unit capable of storing two terabytes of information in order to hold the 159 gigabytes of material which were copied from computers located at Defendant's business location. Defense counsel believes it will take him approximately one actual month to review the 80,000 pages of material presently stored at the FBI office. In regard to the 159 gigabytes of information which were not previously provided to the defense it is difficult to calculate a time to review those materials. (emphasis added)

Mr. LeDonne has available to him a residence in which he can be monitored electronically by the probation department. Based upon this electronic monitoring, the probation officer would be aware of when he left the premises within minutes of same occurring. This same notice would be available if the Defendant were to remove the electronic monitoring device. As a result, should the Defendant choose to make an attempt to flee the Government would be aware of the fact within minutes of same occurring.

There has been no evidence presented that the Defendant has some type of network which would assist him in regard to fleeing the jurisdiction. The cash payments made to Defendant's ex-wife came from his business partner, Loren Hehrbrandt. It is difficult to believe that Mr. Hehrbrandt would make himself an accomplice in regard to a scheme involving the Defendant attempting to escape from this jurisdiction by providing him assets in which to accomplish same. Defendant would subpoena Mr. Hehrbrandt if the Court desired to question him in this regard.

The Defendant has presented a strong argument that it is difficult for him to adequately review the discovery materials in order to present a defense. The Defendant has presented a suitable residence in which he can be detained and monitored. He then would be in a position to review the evidence against him and assist counsel in regard to presenting his defense. The evidence as to Defendant fleeing the jurisdiction is speculative and not supported by Defendant's prior actions in which he faced his accusers and spent time in jail. Based upon the aforesaid, the court should balance Defendant's rights to assist in his defense against the evidence that he is an actual flight risk.

For these reasons, Defendant would request that the court modify its terms of pretrial detention to allow the Defendant to be released to the Zuniga residence with electronic monitoring and instructions not to leave the residence; that probation monitor the residence with periodic inspections and any other necessary security measures. This would constitute the least restrictive means necessary to assure that the Defendant complies with the terms and conditions of pretrial release and also allows him the opportunity to assist in his own defense.

Respectfully Submitted,

/s/ Visvaldis P. Kupsis
Visvaldis P. Kupsis, 5594-45
1158 W. Lincolnway, Ste. 1C
Valparaiso, IN 46385
(219) 465-6240